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Summary record of the 26th meeting
Held at Headquarters, New York, on Friday, 19 October 2018, at 3 p.m.

Chair: Mr. Saikal ..... (Afghanistan)
later: Mr. Kováčik (Vice-Chair) ..... (Slovakia)

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The meeting was called to order at 3 p.m.

Agenda item 74: Promotion and protection of human rights (*continued*) (A/73/40, A/73/44, A/73/48 and A/73/56)

(a) Implementation of human rights instruments (*continued*) (A/73/140, A/73/207, A/73/264, A/73/281, A/73/282 and A/73/309)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/73/138, A/73/139 and A/73/139/Corr.1, A/73/152, A/73/153, A/73/158, A/73/161, A/73/162, A/73/163, A/73/164, A/73/165, A/73/171, A/73/172, A/73/173, A/73/175, A/73/178/Rev.1, A/73/179, A/73/181, A/73/188, A/73/205, A/73/206, A/73/210, A/73/215, A/73/216, A/73/227, A/73/230, A/73/260, A/73/262, A/73/271, A/73/279, A/73/310/Rev.1, A/73/314, A/73/336, A/73/347, A/73/348, A/73/361, A/73/362, A/73/365, A/73/385 and A/73/396)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/73/299, A/73/308, A/73/330, A/73/332, A/73/363, A/73/380, A/73/386, A/73/397, A/73/398 and A/73/404)

(d) Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action (*continued*) (A/73/36 and A/73/399)

1. **Mr. Heller** (Special Rapporteur on the human rights to safe drinking water and sanitation), introducing his report on the principle of accountability in the context of the realization of the human rights to water and sanitation (A/73/162), said that enforcing accountability in the water and sanitation sector was difficult, in part because the range of actors involved complicated the attribution of responsibility. Furthermore, in many instances, there was no effective regulation. Globalization and the neoliberal wave had weakened the role of the State, and private service providers, which held natural monopolies and frequently operated without a licence, were difficult to regulate. In the context of a crisis, there were no clear, human-rights based standards for the provision of water and sanitation.

2. The report analysed accountability in terms of three dimensions: roles, responsibility and performance standards; justification and explanation, and enforcement. In the responsibility dimension, accountability required a clear definition of who the accountable actors were, to whom they were accountable and for what they were accountable. Non-State accountable actors ranged from private companies, non-governmental organizations and community-based organizations to individuals and included non-sector businesses whose operations could affect water and sanitation. His recommendations called for clearly defined, transparent roles and responsibilities and performance standards consistent with the realization of the human rights to water and sanitation.

3. In the explanatory dimension, accountable actors must provide explanations and justifications both on request and proactively. They should have clear mechanisms for responding to requests and concerns in a clear, timely and useful manner, and they should facilitate spaces for dialogue where affected populations could assess the information received, voice their opinions and influence decisions, all without language barriers.

4. In the enforcement dimension, compliance must be enforced through judicial and non-judicial oversight mechanisms operating in an environment where affected populations were empowered to lodge complaints and could trust the effectiveness of the mechanisms. For such purposes, the accountable actors should establish effective oversight systems and eliminate any barriers to redress for vulnerable populations. Accountability was a core and cross-cutting human rights principle and should be used to hold State and non-State actors accountable for actions, inactions and decisions that affected the enjoyment of the human rights to water and sanitation.

5. In closing, he noted that the special procedures mandate holders attached great importance to their engagement with the Committee. It was regrettable that scheduling changes had prevented some of his colleagues from presenting their reports to the Committee in person; he expressed the hope that a better consultation process would be put in place in the future.

6. **Ms. Cruz Yábar** (Spain) asked the Special Rapporteur to identify the primary barrier to accountability and to give an example of a good practice for ensuring that marginalized or vulnerable people had access to enforcement mechanisms.

7. **Ms. Makwabe** (South Africa) said that most of the world's water problems stemmed from growing demand in the absence of national strategies. Her delegation would like to know how the principle of accountability related to the inaccessibility and unaffordability of water and sanitation for poor communities.

8. **Mr. Rohland** (Germany) asked for examples of best practices for ensuring clear responsibilities and a clear explanatory process. He would also appreciate hearing his views on the justiciability of the human rights to safe drinking water and sanitation.

9. **Ms. Rasheed** (Observer for the State of Palestine) said that, for more than 50 years, Israel had controlled the water resources in occupied Palestine, effectively using them as a weapon. She asked how the international community could hold Israel accountable for violating the Palestinian people's right to water.

10. **Mr. Forax** (Observer for the European Union) said that the European Union was taking steps to revise its drinking water directive and to improve distribution risk assessment and monitoring. As it was one the world's major cooperation donors, he would appreciate hearing the Special Rapporteur's views on the most effective approach to enforcing mutual accountability under the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action as well as accountability in the context of projects involving informal service providers.

11. **Ms. Macherel** (Switzerland), noting that fragmented responsibility for safe drinking water impeded accountability, said that Switzerland made integrated water resource management central to its development cooperation in the water sector. She asked which of the three dimensions of accountability tended to pose the greatest challenges; whether efforts to fulfil the human rights to water and sanitation should focus on affordability, physical accessibility, availability of service or quality, and to what extent decentralized management facilitated or complicated accountability.

12. **Ms. Bouchikhi** (Morocco) said that her Government was implementing an emergency programme to address water shortages in addition to its ongoing liquid waste management and wastewater purification programmes. She requested examples of good practice for attaining Sustainable Development Goal 6 on water and sanitation.

13. **Mr. Escalante Hasbún** (El Salvador), recalling the Special Rapporteur's 2016 visit, said that his Government was continuing to follow up on his recommendations. He would appreciate information on accountability gaps in cases of shared responsibility, among the riparian States of transborder aquifers for instance, and on judicial precedent in such cases.

14. **Mr. Shulgin** (Russian Federation) said that, in conflict or emergency situations, States were sometimes unable to fulfil their obligation to supply water. Military operations often targeted water treatment plants, and where several States shared water resources, access to water could be used as a political instrument. For example, the authorities in Kiev had cut off water to northern Crimea. He would like to know what measures were available in such situations to penalize violations of international law and enforce accountability.

15. **Ms. Shlain** (Israel) said that her country was working with its neighbours and international donors to launch the Red Sea-Dead Sea Water Conveyance Project, which would provide water for Israel, Jordan and the Palestinian territories. Her delegation would appreciate examples of similar cooperative projects involving transboundary waters.

16. **Mr. Yaremenko** (Ukraine) said that his country had no obligation to supply water to the occupying forces in the Crimean peninsula. Moreover, under international humanitarian law, as an occupying power, the Russian Federation was responsible for the provision of water in the occupied territory.

17. **Mr. Heller** (Special Rapporteur on the human rights to safe drinking water and sanitation) said that he wished to reiterate the importance of improving accountability in the water and sanitation sector, where the requirements for accountability were poorly understood and few countries had good accountability systems. When identifying barriers, attention should focus on the most vulnerable populations. Even when there were effective complaint mechanisms, vulnerable populations usually did not have access to them, and when the provider was profit-oriented, there might be no mechanism at all. However, the first step was to identify responsibilities.

18. Decentralization had advantages and disadvantages. Local governments tended to look more carefully at the needs of all segments of the population, but definition of responsibility could become complicated with decentralized management – for example, when local governments provided the service and the national Government, the funding.

19. With respect to justiciability, lack of access to water or sanitation services usually required urgent action, and the wheels of justice ground slowly. While justiciability was necessary in extreme cases, service providers and governments needed to establish faster, more efficient mechanisms for registering and addressing complaints.

20. Regarding the Russian Federation and Ukraine, civilian access to the water supply should be respected and preserved in conflict situations.

21. With respect to good practices, in the responsibility dimension, an initiative of the United Nations Economic Commission for Europe (UNECE),

the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, established performance standards for States parties and a compliance committee to which they reported. He was discussing the feasibility of adapting the Protocol to other regions with UNECE experts. His report mentioned a number of good practices in the explanatory dimension, including in Zambia, Mexico, Burkina Faso, Nepal, Tajikistan and Honduras. Regarding enforceability, in Colombia, the Office of the Ombudsman reviewed progress on water and sanitation and issued recommendations. As indicated in his report, both the Asia-Pacific Forum of National Human Rights Institutions and Peru had also taken useful steps to improve compliance.

22. **Ms. Farha** (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context), introducing her report (A/73/310/Rev.1), encouraged States to use it as guidance to achieve Sustainable Development Goal target 11.1 on safe and affordable housing. Upgrading informal settlements and ensuring access for all to adequate, secure and affordable housing by 2030 was a daunting task. One quarter of the world's urban population lived in grossly inadequate informal settlements, usually without water and sanitation services.

23. In her many visits to informal settlements around the world, she had experienced shame at their existence and admiration for the resilience and courage of their residents. Accordingly, her report identified informal settlements as egregious human rights violations, but it also recognized them as a claiming of rights to dignity and place. The report took a human rights-based approach to upgrading oriented around two key pillars: building on the capacities of the communities and recognizing upgrading as a human rights obligation for which States and international organizations must be held meaningfully accountable.

24. The report made a number of important recommendations for supporting participatory, community-led approaches based on the right to adequate housing. For example, it indicated that the overriding objective of upgrading should be to ensure the full enjoyment of the right in all of its dimensions. There should be legal guarantees of the right to in situ upgrading, where possible and desired by the residents, and of the right of residents to participate in all aspects of upgrading. Planning and zoning should focus on meeting the needs of informal settlement residents rather than on relocating informal settlements. Punitive and discriminatory treatment of informal settlements should be prohibited by law. Judicial and human rights institutions should ensure that informal settlement residents had access to justice. Environmental risk management plans should draw on the knowledge of the residents, and environmental risks should not be used as an excuse for unnecessary displacement. States should require financial institutions and development agencies to make compliance with the right to housing a condition of funding and should redirect private investment to support rights-based upgrading. Implementing those and the other recommendations contained in the report would require the concerted effort of States, development cooperation agencies, business and civil society.

25. **Ms. Moutchou** (Morocco) said that growing numbers of people were forced to live in informal settlements or on the streets, in part because of unregulated real estate speculation. She asked the Special Rapporteur to recommend a starting point for a rights-based housing strategy. She would also like to know how important Sustainable Development Goal 17 on revitalizing the global partnership for sustainable development was for Goal 11 on sustainable cities and human settlements.

26. **Ms. Bhengu** (South Africa) said that, too often, violations of the right to housing occurred with impunity. Her delegation agreed that the upgrading of informal settlements was a human rights imperative and that both public and private actors should have a role in that effort. The Constitution of South Africa recognized the right to housing and required the State to work towards its realization; the right was justiciable and had been successfully exercised numerous times in the Constitutional Court. She asked why the Special Rapporteur had adopted a human rights-based approach rather than a right-to-development approach.

27. **Mr. Forax** (Observer for the European Union) said that his delegation welcomed the assessment of informal settlements from a human rights perspective. He asked how the human rights paradigm could help to improve the quality of life of urban residents, including those in informal settlements. Also, women and girls in informal settlements were at high risk of sexual and gender-based violence, but they rarely had access to shelters. He would appreciate hearing about best practices and recommendations for ensuring their safety and security.

28. **Ms. Yoon** Seong-Mee (Republic of Korea) said that, in accordance with the national action plan on human rights, which emphasized the State's role in upholding the right to adequate housing, the Republic of Korea would strengthen both its public housing policies

and a support programme that reduced housing costs for low-income populations. It would also improve the survey of residents of informal settlements and provide them with public housing. During her visit to the Republic of Korea, the Special Rapporteur had reinforced the concept of housing as a human right. Her Government would continue to cooperate fully with the United Nations human rights mechanisms, including the special procedures mandate holders.

29. **Mr. Shulgin** (Russian Federation), noting the interdisciplinary nature of the issues raised, said that it would be beneficial to consider the work of other United Nations mechanisms and entities, such the Special Rapporteur on the human rights to safe drinking water and sanitation and the United Nations Human Settlements Programme (UN-Habitat). Furthermore, although his delegation supported a rights-based approach, there was no point in categorizing defenders of the right to housing as a separate group of human rights defenders warranting special protection. He would be interested in her vision for improving informal settlements in countries receiving humanitarian aid. Noting that people living in informal settlements in conflict and emergency situations were especially vulnerable to recruitment by extremist groups, he expressed the hope that the Special Rapporteur would focus on that issue in her future work.

30. **Ms. Barghouti** (Observer for the State of Palestine) said that during its half-century occupation, Israel had committed gross violations of the Palestinian people's right to adequate housing through continued illegal settlement and expansion, forced displacements, home demolitions and the revocation of the residency rights of Palestinian residents of Jerusalem. The occupying Power had just announced new plans for construction in al-Khalil (Hebron), and it was preparing to demolish the Bedouin community of Khan al-Ahmar, a plan which had prompted international condemnation and would constitute blatant ethnic cleansing. She asked what the international community could do to prevent the destruction of Khan al-Ahmar and, if it was destroyed, what it could do to hold the occupying Power accountable.

31. **Ms. Wundsch** (Germany) said that her delegation agreed that the residents of informal settlements should be regarded as claimants, not criminals, and that in situ upgrading was the best approach in most cases. She would like to know the main reasons for evictions and relocations and how conflict between the inhabitants of formal and informal settlements could be addressed. She was also interested in learning about best practices for ensuring that upgrading programmes complied with the right to adequate housing.

32. **Ms. Farha** (Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context) said that the first step in tackling the housing crisis was to craft an overarching, rights-based housing strategy, which should be implemented in accordance with the 10 principles outlined in her report to the Human Rights Council on that subject (A/HRC/37/53). The most urgent issue was homelessness.

33. International development cooperation would be very important for upgrading informal settlements in many contexts. It should be based on a genuine partnership between donors and recipients and on the premise that adequate housing was a human right.

34. In view of her mandate, she focused on the right to housing, but it complemented the right to development. The right to housing was a well-established international human right that could be enforced in courts, particularly as adequate housing was well defined in international jurisprudence. It was a very concrete right and especially useful in the context of upgrading informal settlements.

35. Regarding the absence of shelters for women residents of informal settlements, the issue of shelters was a complicated one. As she indicated in her report, the women themselves should be allowed to determine how best to address their safety and security risks.

36. She shared the Russian delegation's concern about informal settlements in conflict and emergency situations. She had been in conversation with humanitarian aid organizations on that subject, but had not yet decided to write a report on it. The responsibility to implement the right to adequate housing applied in all contexts at all times. She did not see how ensuring adequate housing for people who did not have it could be considered special protection in any circumstances.

37. She had just issued a press release on Khan al-Ahmar, and would continue to raise the issue of house demolitions and relocations of Palestinians. The word was her sword, and she would continue to reiterate the human rights imperative for all people, including Palestinians.

38. The leading cause of eviction and displacement appeared to be development. Often residents of informal settlements were living on valuable land, and cities and national Governments could generate income by selling the property to investors. Climate change-related causes such as flooding were increasingly prevalent. In such cases, residents of informal settlements should not be relocated summarily. Instead, they should be consulted

and given the resources to hire specialists to design solutions, although if taken seriously, they sometimes came up with ingenious solutions themselves. As for best practices, she referred the delegations to the example in her report of the community in Buenos Aires that had contested eviction and won the right to upgrading.

39. *Mr. Kováčik (Slovakia), Vice-Chair, took the Chair.*

40. **Mr. Pūras** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), introducing his report on the realization of the right to mental health of people on the move (A/73/216), said that it focused on those who had experienced adversity. He had chosen the term "people on the move" to emphasize that they were rights holders, regardless of their legal status. Especially in view of the unprecedented movement of people worldwide, it was important to understand that fear and intolerance harmed the mental health of both people on the move and the public at large and for those in positions of power or authority to refrain from promoting xenophobia. People on the move contributed up to twice as much to the economy as it cost to host them, and holistic investment in the mental health of such people and their host communities could help to reconcile differences and address the root causes of intolerance and exclusion.

41. Laws and policies that institutionalized the separation of children on the move from their families or complicated family reunification caused long-term harm to the children and should be eliminated without delay. Similarly, immigration detention could exacerbate existing mental health conditions and should be phased out. The detention of children as well as migrants with psychosocial, cognitive or intellectual disabilities should be prohibited immediately.

42. The report recommended that States develop rights-based mental health care and support services that addressed the needs of people on the move for safety, community participation and livelihoods and were culture, religion and language-sensitive. Steps should be taken to reverse reliance on rights-violating mental health interventions such as institutionalization and overmedication. Individual screening procedures should be established to identify people on the move with mental health needs, along with effective referrals to appropriate services. He emphasized that decisions regarding the entry, stay, naturalization or expulsion of people on the move should not be made on the basis of mental health status. States should move towards more holistic models of healing that focused on the key determinants of mental health, including healthy community relationships and inclusion.

43. **Ms. Bhengu** (South Africa) said that the South African Constitution recognized the right to health care, including reproductive health care, and required the State to work towards the realization of that and other socioeconomic rights. The National Mental Health Policy Framework and Strategic Plan 2013–2020 identified key actions for integrating quality mental health services, with special attention to women, children, adolescents, older people and people living with HIV/AIDS. Like many developing countries, South Africa faced a high incidence of mental disorders linked to social determinants such as poverty, violence and substance abuse. She asked if people on the move were more prone to mental health disorders than the vulnerable groups mentioned above.

44. **Mr. Vieira Rodrigues** (Portugal) said that his country's strong commitment to the promotion of mental health was evident in its policy of giving refugees the same access to mental health services as Portuguese citizens as well as in its co-sponsorship of the Human Rights Council resolutions on mental health and human rights. He asked how the Global Compact for Safe, Regular and Orderly Migration might represent an opportunity for States to adopt people-centred, human rights-based strategies, policies and programmes aimed at upholding respect for the rights, will and preferences of persons with mental health conditions and psychosocial disabilities.

45. **Mr. Forax** (Observer for the European Union) said that the Special Rapporteur's report filled a vacuum in the discussion of the health of people on the move. His delegation shared the concern about the damaging effects of hostile environments and would like to know what practical steps could be taken to reduce their impact on people on the move. He asked for recommendations on cooperation between humanitarian and development stakeholders in the field of mental health, including best practices.

46. **Ms. Jakstiene** (Lithuania) said that she would be interested in best practices in training mental health professionals in order to reverse the tendencies to overpathologize migrants and underemphasize the significance of non-migration-related determinants of mental health. She would also like to know what additional steps could be taken to create an appropriate, safe environment for children on the move.

47. **Ms. Matar** (Bahrain), noting that her country was a co-chair of the Group of Friends of Mental Health and Well-being, said that people in Bahrain enjoyed equitable access to high-quality health care. Bahrain

focused on the prevention and early detection of mental health problems and took a patient-centric, holistic approach. In that context, it had established a programme to provide mental health services in schools as well as mental health clinics at primary health care centres. She would appreciate hearing about the most effective strategies and steps for fostering a community-based mental health approach.

48. **Ms. Bouchikhi** (Morocco) said that her Government was continuing to expand health care coverage and had taken steps to promote mental health care and protect the environment. It remained fully committed to fostering the physical and mental health and well-being of the Moroccan people, in accordance with the 2030 Agenda for Sustainable Development, and it welcomed the role of the United Nations and the World Health Organization in that context. She asked if the Special Rapporteur planned to organize a side event on mental health during the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration in December.

49. **Mr. Gonzalez** (Colombia) said that, in view of the migration crisis in the Americas, the mental health of persons on the move was of particular interest to his Government, which continued to stress the need for a comprehensive joint response to migration, including cooperation and information sharing. Noting that discrimination, intolerance and a selective approach to human rights undermined the realization of the right to physical and mental health for everyone, he urged all stakeholders to maintain their efforts to create inclusive societies where no one was left behind.

50. Improving the quality of life of persons with mental illness was a global issue. To address it, States needed to develop and improve access to mental health services, raise awareness of mental health problems, reduce stigma, organize research on mental health conditions at the national level and encourage the sharing of experiences and practices. They also needed more mental health professionals. To address the shortage of adequately trained professionals in Colombia, his Government was looking to include more mental health content in health care curriculums.

51. **Ms. Ershadi** (Islamic Republic of Iran), noting that the right to health was internationally recognized, said that her Government considered providing health care for all a priority. The unilateral sanctions imposed by the United States particularly affected the most vulnerable, including those in need of vital medical care and services. She asked if the Special Rapporteur had analysed the impact of unilateral sanctions on access to mental health care and what measures could be taken to reduce their impact on mental health conditions.

52. **Mr. Pūras** (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health) said that he might not be able to organize a side event on mental health at the Intergovernmental Conference, but he would continue to work on health issues at the systemic level of policy-making. His 2016 report on the Sustainable Development Goals and the right to health (A/71/304) had addressed cross-cutting issues that would remain unresolved if States did not abandon outdated and discriminatory practices, including with respect to people on the move and mental health in general.

53. Migrants were usually healthier than the general population, although the subset who had experienced violence or torture might need specific mental health interventions. However, medicalization and pathologization should be minimized, since they increased discrimination and stigmatization. People on the move were resilient and should be allowed to contribute to society, which was essential for their mental health.

54. Many international publications and national policies on mental health followed the basic principles of good mental health care, including rights and evidence-based approaches. However, power asymmetries and discriminatory practices and laws prevented their implementation and kept mental health professionals from working effectively. Although the World Medical Association and the World Psychiatric Association were working to combat discrimination in health care against the mentally ill, people with mental health conditions still encountered discrimination in many countries. Modern approaches that encouraged empowerment, inclusion and meaningful participation could have excellent results. Lebanon, which provided psychosocial support for its millions of refugees and migrants in mainstream health services, was a good example of the integration of mental health and migration policies and services. He did not recommend creating parallel systems, which were not cost-effective and increased discrimination.

55. With regard to an appropriate environment for children on the move, in his report on early childhood development and the right to health (A/70/213), he had argued that early childhood psychosocial interventions should be placed on a par with medical interventions. Detaining migrant children and separating them from their families were classic examples of detrimental practices and should end immediately. Children needed

to feel safe and to have close relationships with their primary caregivers, and even adolescents could experience anxiety, depression, behavioural disorders or long-lasting personality disorders as a result of detention or separation.

56. As he had indicated in his report, humanitarian assistance programmes often were paternalistic, treating people on the move as passive recipients of aid. Instead, such people should be empowered and involved in all matters concerning their health care. Those who were health care professionals could help to provide health care for their fellow migrants.

57. In conclusion, he emphasized that a crisis could lead to positive change. It should provide the impetus for global, regional and national mobilization to implement human rights and evidence-based approaches to mental health for people on the move.

The meeting rose at 5.20 p.m.